

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

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BY *Melvin*

SCOTT O'GRADY,	§	CIVIL ACTION NO. 5:02CV173
Plaintiff,	§	
	§	
v.	§	"JURY"
	§	
TWENTIETH CENTURY FOX FILM CORP.	§	
and DISCOVERY COMMUNICATIONS, INC.,	§	JUDGE DAVID FOLSOM
Defendants.	§	

**DEFENDANTS' SUPPLEMENT TO JOINT MOTION TO EXCLUDE TESTIMONY BY  
EXPERT WITNESS MARK A. ROESLER**

TO THE HONORABLE MAGISTRATE JUDGE:

Twentieth Century Fox Film Corporation ("Twentieth Century Fox") and Discovery Communications, Inc. ("Discovery") ("Defendants") respectfully supplement their Joint Motion to Exclude Testimony by Expert Witness Mark A. Roesler ("Roesler"), as follows:

**I.**

**Introduction**

The Defendants filed a motion under Federal Rule of Evidence 702 to exclude Mr. Roesler's testimony. That motion was referred to this Court and is pending. After the filing of the motion, the Court heard and considered Defendants' Motion for Summary Judgment, granting in part and denying in part those motions. Twentieth Century Fox and Discovery both filed

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objections to the Magistrate's Report to the extent the Motions for Summary Judgment were denied. The Plaintiff did not file objections with respect to that part of the Magistrate's Report and Recommendation that granted the summary judgment. The time for filing such objections has passed. In light of the Magistrate Judge's rulings on summary judgment, the Defendants move additionally under Federal Rules of Evidence 401 and 403 because the Roesler testimony is not relevant to any issue remaining in the case.

## **II.**

### **The Only Issue Mr. Roesler's Testimony Could Relate to Has Been Removed From the Case by Summary Judgment.**

As will be shown below, Mr. Roesler's testimony was limited to an evaluation of the Plaintiff's "life rights" or "movie rights". As Mr. Roesler stated in his report, "Scott O'Grady would be entitled to a fee of at least \$1 million for his movie rights assuming that his story were told accurately. Because the facts of the story were changed, Scott O'Grady could command a premium of two to three times the amount which would be required if his story were accurately told. Thus, a reasonable fee in this particular case would be \$2.5 million." Exhibit "A" to the Joint Motion at p. 5.

As this Court correctly concluded, under applicable and binding Fifth Circuit precedent, the Plaintiff has no claim for rights to his life story. The Court held as follows:

Plaintiff seems to have abandoned any claims of misappropriation or Lanham Act violations as to Fox Film's making the movie. Even if Plaintiff has not abandoned his claims of misappropriation and Lanham Act violations as to the movie, the Court agrees with Fox Film that the protection of name or likeness under Texas

law does not include a person's life story. See *Matthews v. Wozencraft*, 15 F.3d 432, 437 (5th Cir. 1994). Plaintiff has created no genuine issues of material fact as to his claims, if any, for misappropriation and Lanham Act violations as to the movie. ***Fox Film is entitled to summary judgment on all claims emanating from its making the movie.***

United States Magistrate Judge Report and Recommendation of December 19, at p. 13.

Mr. Roesler was specifically asked and disclaimed any other opinions in this case, as the following illustrates:

A. (By Mr. Roesler) My expertise was being sought to determine a fair remuneration for Mr. O'Grady for a movie, a feature film, that was based upon the events that happened to him, and which those events weren't entirely accurate.

Q. (By Ms. Handman) And that is the sum total of what your purpose was in serving as an expert?

A. That's correct.

Q. Were you -- did you -- were you asked at all about what the value of Mr. O'Grady's endorsement of the movie would be?

A. Endorsement of the movie if it were not about his?

Q. Correct.

A. No, I was not.

Q. And you don't have any plans to offer an opinion on that subject, is that correct?

A. Yes, that is correct.

Roesler Deposition at pp. 30-31 attached as Exhibit "B" to the original Motion.

Mr. Roesler made clear throughout his deposition that he was talking about a life-rights transaction with respect to a motion picture.

Q. (By Ms. Hamilton) And in this case you were speaking in terms of -- that you were opining on a life rights transaction for Mr. O'Grady?

A. That's correct, with respect to a motion picture.

Q. Correct.

A. I'll clarify that. I'm opining as to the value of his intellectual property rights used in a motion picture, and in this case it was on his events that, certain events that transpired in his life at a particular time.

Roesler Deposition at pp. 127-128, attached hereto as Exhibit "1" and incorporated herein.

With respect to the \$1 million figure found in the conclusion of Mr. Roesler's report, he was asked:

Q. How did you arrive at that \$1 million figure?

A. I arrived at the \$1 million figure as a, for a bottom line number that I would, that I would command for a personality that I represented where they were going to do a feature film centered around some or all of their life and also took into consideration that it might be a little more because of the current mood in the country at that time, i.e., back to the 911 situation.

Roesler Deposition at pp. 145-146.

Mr. Roesler was then asked about the \$2.5 million figure.

Q. Now, with respect to the \$2.5 million, \$2.5 million because of the facts of the story that were changed, is that your basis for increasing that amount from the \$1 million to the \$2.5 million?

A. Yes.

Roesler Deposition at pp. 155-156.

Finally, Mr. Roesler was asked whether he intended to offer expert opinions on other damage issues.

Q. Do you intend to offer an opinion about whether or not the movie -- the Fox movie "Behind Enemy Lines" had a negative impact on Scott O'Grady's business?

A. No.

Roesler Deposition at p. 168.

It is thus clear that Mr. Roesler is only offering opinions on life-story rights, or as he sometimes puts it, movie rights. That claim no longer exists in the lawsuit and, in fact, that point was made clear by counsel for all parties at yesterday's voir dire of the jury. To inject Mr. Roesler's testimony into this case at this time is not relevant to any remaining issue and would be prejudicial because it would tend to confuse the jury (see Rule 403).

WHEREFORE, PREMISES CONSIDERED, Defendants request that the Magistrate Judge recommend that the testimony of Mr. Roesler be excluded.

Respectfully submitted,

  
Charles L. Babcock *by permission 8/04*

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**CERTIFICATE OF SERVICE**

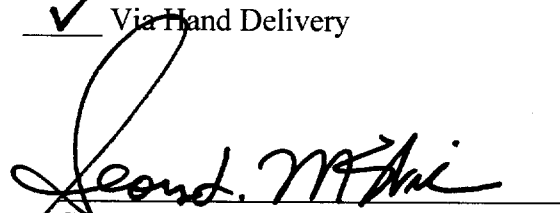
I do hereby certify that a true and correct copy of the above and foregoing instrument was sent as indicated to the following counsel on this 7<sup>th</sup> day of January, 2004:

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George L. McWilliams

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

SCOTT O'GRADY, \*  
Plaintiff, \*  
VS. \* CIVIL ACTION  
NO. 502CV173  
TWENTIETH CENTURY FOX FILM \*  
CORPORATION, and DISCOVERY \*  
COMMUNICATIONS, INC., \*  
Defendants. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. ROESLER

\*\*\*\*\*

ANSWERS AND VIDEOTAPED DEPOSITION OF MARK A.  
ROESLER, produced as a witness at the instance of the  
Defendant Discovery Communications, Inc., taken in the  
above-styled and -numbered cause on the 20th day of  
June, 2003, A.D., beginning at 9:15 a.m., before  
Kristel L. Wilkins, a Certified Shorthand Reporter in  
and for the State of Texas, in the offices of Locke,  
Liddell & Sapp, located at 2200 Ross Avenue, Suite  
1900, Dallas, Texas, in accordance with the Federal  
Rules of Civil Procedure and the agreements hereinafter  
set forth.

EXHIBIT

1



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1 A. I looked at the Discovery Channel documentary.  
 2 Q. Okay. And was it just the Discovery Channel  
 3 documentary, or did it include third-party ads as well  
 4 as ads and promotions for the "Behind Enemy Lines," the  
 5 Fox movie?  
 6 A. Yes, it included those too.  
 7 Q. Okay. So it included the advertisements as  
 8 well?  
 9 A. Yes.  
 10 Q. Okay. Let me go through some of the names that  
 11 you went through this morning. I believe you testified  
 12 to a 20-second use of Sir Laurence Oliviet of his image  
 13 or likeness in a film this morning?  
 14 A. Yes.  
 15 Q. And that 20-second use, that was not a life  
 16 rights transaction, was it?  
 17 A. No.  
 18 Q. And in your opinion, is Sir Laurence Oliviet a  
 19 comparable property to Mr. O'Grady?  
 20 A. It's a comparable use and --  
 21 Q. And what -- I'm sorry.  
 22 A. I'm sorry. It's comparable use, in that it's  
 23 use in a feature film.  
 24 Q. Okay. So 20 seconds of Mr. -- of Sir Laurence  
 25 Oliviet's likeness in a film is a comparable use to

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1 A. I'll clarify that. I'm -- I'm opining as to  
 2 the value of his intellectual property rights used in a  
 3 motion picture, and in this case, it was on his --  
 4 events that -- certain events that transpired in his  
 5 life at a particular time.  
 6 Q. Okay. If you would, clarify that for me  
 7 because that's not what I understood your report to be  
 8 going through, so you're talking about all of his  
 9 intellectual property rights?  
 10 A. His -- well, we're talking about whatever  
 11 intellectual property rights apply in this particular  
 12 use.  
 13 Q. Okay. Let's start there just so we can -- so I  
 14 can be sure. What intellectual property rights apply  
 15 in this instance in this case that you are opining  
 16 about?  
 17 A. In my report?  
 18 Q. Yes.  
 19 A. In my report. His intellectual property rights  
 20 would be his right of publicity, which would include  
 21 his right of association, any trademark rights he has  
 22 and any copyrights that he has. I'm -- in this  
 23 particular case, it would be primarily right of  
 24 publicity issues, and so that --  
 25 I'm opining -- as I said, my first

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1 what?  
 2 A. To a fee that you would charge for someone in a  
 3 case like this of a story on their -- a feature film on  
 4 their life story.  
 5 Q. So in order to have that, you're saying that  
 6 you are likening Sir Laurence Oliviet as a comparable  
 7 property to Scott O'Grady; is that correct?  
 8 A. A comparable use, not a comparable property.  
 9 Q. So the use is just the fact of the motion  
 10 picture?  
 11 A. That's right.  
 12 Q. Let me go to -- it will take a minute to get  
 13 this untangled. Let me go through the same thing. You  
 14 also referenced a feature-film use of President Nixon  
 15 for two to three minutes?  
 16 A. Okay.  
 17 Q. And that was not a life rights transaction, was  
 18 it?  
 19 A. That's correct.  
 20 Q. And in this case, you are speaking in terms  
 21 of -- that you are opining on a life rights transaction  
 22 for Mr. O'Grady?  
 23 A. That's correct, with respect to a motion  
 24 picture.  
 25 Q. Correct.

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1 sentence is the value of Scott O'Grady's intellectual  
 2 property rights in relation to a feature film based  
 3 upon his real-life experience in Bosnia in 1995, so  
 4 it's not necessarily his life story rights. It's  
 5 his -- it's the rights as they relate to that  
 6 particular event in his life.  
 7 Q. Okay. And you named the right of publicity,  
 8 his trademark rights, his copyrights?  
 9 A. Uh-huh.  
 10 Q. His right of association?  
 11 A. Uh-huh.  
 12 Q. Any other rights?  
 13 A. I think that would basically cover what rights  
 14 he has.  
 15 Q. Okay. What --  
 16 A. I'm -- I'm defining what intellectual property  
 17 rights are.  
 18 Q. I understand, but what intellectual -- are you  
 19 saying that these four rights, the right of publicity,  
 20 the right of trademark, the copyright and right of  
 21 association, are all intellectual property rights that  
 22 relate to your opinion regarding the Fox film at issue  
 23 in this lawsuit?  
 24 A. No, that's not exactly what I said. What I  
 25 said was someone's intellectual property rights,

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1 (Requested portion was read.)  
 2 A. I would say that's correct.  
 3 Q. (BY MS. HAMILTON) Now, with respect to your  
 4 work in this case and accepting that you were using  
 5 this market approach that you reflect in your report,  
 6 what is the comparable property that you used in  
 7 determining the valuation that you arrived at in your  
 8 opinion?  
 9 A. Any celebrity personality that I've represented  
 10 is a comparable property. Any celebrity property that  
 11 I've represented in a media-type use is a comparable  
 12 property.  
 13 Q. So it's your testimony that any celebrity that  
 14 you have represented is a comparable property to Scott  
 15 O'Grady?  
 16 A. That's correct.  
 17 Q. And is it your opinion then that any celebrity  
 18 that you have represented is a comparable property with  
 19 a comparable value to Scott O'Grady?  
 20 A. Well, the values go up and down --  
 21 Q. I want to --  
 22 A. -- depending upon the facts of a particular  
 23 situation.  
 24 Q. Okay. What did you use -- specifically, who  
 25 did you consider as a comparable property to Scott

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1 character in the movie is based on some famous person,  
 2 are you saying that the fee would be based on the  
 3 length of the time of that film?  
 4 A. Not -- not the length of the time, more the --  
 5 I mean, it could be anywhere from a -- whether it's a  
 6 70-minute film or a 270-minute film -- I guess there  
 7 aren't too many 270-minute films, but whether it's a  
 8 short film or a long film is irrelevant. It's more  
 9 what -- whether it's the primary focus of the film.  
 10 Q. Okay.  
 11 A. I mean, if it's -- if the film is all about a  
 12 particular personality, that's much different than if  
 13 it's not, if it's only a minor part of the film. If  
 14 it's a minor part, how minor is it? I mean, minor  
 15 can -- you know, there is the whole continuum of --  
 16 Q. You might want to unravel the cord from around  
 17 your wrist or something so it doesn't go flying.  
 18 Sorry to interrupt you. Is there anything  
 19 else?  
 20 A. No. I mean, there is -- there is a continuum  
 21 of -- you know, if -- if Scott O'Grady -- if they were  
 22 using a poster of him in the feature film and the  
 23 poster was shown in one scene for five seconds, there  
 24 might be a fee of \$1,000, or if it's -- if there is ten  
 25 scenes where an image of him is used in some capacity,

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1 O'Grady in reaching your opinion in this case?  
 2 A. Again, all of the clients that I represent.  
 3 Q. I want to know the names, please.  
 4 A. Okay. Do you want me to read them off the  
 5 client list?  
 6 Q. Wherever -- you know, whatever is best for you.  
 7 A. Marilyn Monroe, James Dean, Princess Diana,  
 8 Sophia Loren, on down through the 200 clients that I  
 9 represent.  
 10 Q. Okay. And what did you use as a comparable  
 11 value for Mr. O'Grady?  
 12 A. A "comparable value" meaning --  
 13 Q. Yes.  
 14 A. I mean, I -- typically, you look at how --  
 15 what -- the length of time. If it's a feature film, is  
 16 the entire feature film about somebody, and if it's  
 17 about somebody, there is -- there is a fee that you  
 18 would charge for something like that.  
 19 Q. Okay. So it would be based on the fee; it  
 20 would be based on the time or the length of the film,  
 21 the motion picture?  
 22 A. Not -- well --  
 23 Q. Assuming we have a movie -- I'm sorry.  
 24 A. Yes.  
 25 Q. Assuming you have a movie that the main

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1 there is a higher fee, and that's typically the way it  
 2 works.  
 3 Q. Okay.  
 4 A. Is there a higher fee whether it's Scott  
 5 O'Grady on the wall or Princess Diana or Sophia Loren  
 6 on the wall? No, there isn't a higher fee.  
 7 Q. They all command the same fee?  
 8 A. For the most part. I mean, there might be --  
 9 one might be -- one might be more. One might be -- one  
 10 might be twice as much.  
 11 Q. Okay. Let's go to the specifics of this  
 12 film --  
 13 A. Yes.  
 14 Q. -- and your analysis for this litigation.  
 15 A. Okay.  
 16 Q. When you sat down and arrived at the \$1 million  
 17 figure that's in your conclusion -- it's one of two  
 18 figures, but we'll start with the \$1 million figure.  
 19 How did you arrive at that \$1 million  
 20 figure?  
 21 A. I arrived at the \$1 million figure as a -- for  
 22 a bottom-line number that I would -- that I would  
 23 command for a personality that I represented where they  
 24 were going to do a feature film centered around some or  
 25 all of their life and also took into consideration that

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1 it might be a little more because of the current mood  
2 in the country at that time, i.e., back to the 9/11  
3 situation.

4 Q. Okay. So in other words, it is your opinion  
5 that the value associated with Scott O'Grady has  
6 increased as a result of the tragic events of  
7 September 11th?

8 A. Yes. I think I've said that several times.

9 Q. And so Scott O'Grady has benefitted from the  
10 tragic events of September 11th, in that it has  
11 increased his value; would you agree with that?

12 A. Well, I don't like the way you worded it, but I  
13 agree with the general nature of what you're saying.

14 Q. Okay. So can you tell me, sitting here  
15 today -- so it doesn't matter whether Scott O'Grady is  
16 a pilot shot down in 1995 or he was, you know, a famous  
17 motorcycle driver -- rider in the '60s; so long as  
18 someone was making a major motion picture that centered  
19 on that individual's life or events in that  
20 individual's life, you would come up with the same \$1  
21 million valuation, including, I guess, the -- and we'll  
22 get to the premium part of it later; is that your  
23 testimony?

24 A. Let me repeat what I think you're saying, and  
25 if you -- and then I'll --

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1 the best deal for your client; isn't that correct?

2 A. Well, I'm assuming that I'm a competent agent,  
3 but I'm also assuming that there are plenty of other  
4 agents out there that are also competent, so I would --  
5 my valuation would be someone with a reasonably high  
6 degree of competence would be able to command that kind  
7 of money.

8 Q. But isn't that dollar value based somewhat on  
9 the ability of the agent, in this instance, your  
10 ability to command that? It has nothing to do with the  
11 personality that's being represented; wouldn't you  
12 agree with me on that?

13 A. I'm sorry. I'm going to have to understand  
14 that question once again. If we -- tell me what you  
15 wanted to know again.

16 Q. I want to know the value that you are  
17 placing -- that you are saying you can command --

18 A. Uh-huh.

19 Q. -- because what I understand, this is how you  
20 went about this project.

21 A. Right.

22 Q. You went and thought, "What I am able to go in  
23 as an agent and command for a personality" --

24 A. Uh-huh.

25 Q. -- "in a film" --

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1 Q. Okay.

2 A. What you're saying is irrespective of what type  
3 of personality you are --

4 Q. Right.

5 A. -- as long as you've had some level of fame --

6 Q. Correct.

7 A. -- and there is an interest by a movie studio  
8 for a feature film, would any personality always  
9 command a million dollars?

10 Q. Would you --

11 A. With me as an agent?

12 Q. Would you analogize it the same way?

13 A. Would me as an agent always charge a million  
14 dollars?

15 Q. Yes.

16 A. Okay. No. I would -- I would say that you  
17 could command for a personality -- a personality that  
18 has some level of fame and that there is an interest by  
19 a major studio, that as an agent, I'm confident that my  
20 mindset as I would go in would be anywhere from maybe  
21 \$300,000 to \$500,000 would be the low end to as much as  
22 \$10 million would be the high end.

23 Q. And so the value in large part, at least from  
24 what I'm hearing you say here today, is also based on  
25 your, Mark Roesler's, ability as an agent to negotiate

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1 A. Uh-huh.

2 Q. -- is the basis that you used for arriving at  
3 this \$1 million?

4 A. That's correct.

5 Q. Okay.

6 A. That's correct.

7 Q. And my question is: Is that then based in  
8 large part on your abilities, Mr. Roesler, as an agent,  
9 not necessarily on the personality's value, inherent  
10 value?

11 A. Well -- well --

12 Q. Wouldn't you agree with me on that?

13 A. Not necessarily. I mean, any -- a celebrity  
14 personality typically is represented by an agent,  
15 whether that agent is a talent agent or a legal agent.

16 Q. I understand that. My point is, your opinion  
17 in this case is based on the amount of money that you,  
18 Mark Roesler, would command for someone that you  
19 represented who was in a -- who was a personality who  
20 would -- on whom a film would be done?

21 A. Are you saying that it's not -- it's not based  
22 on what Scott O'Grady would command? It's based on --

23 Q. I asked you what your basis was for your  
24 opinion, and that's where I got started on this.

25 A. The basis of my opinion is what I believe as an

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1 mean -- I'm sorry -- in the Orion Pictures movie that  
2 was never made was a fictionalized account of what  
3 happened to Mr. O'Grady?

4 A. I'm not aware that the whole -- no, I'm not  
5 aware of any specifics of that.

6 Q. Okay. And on the million-dollar fee -- and you  
7 say -- is that something that you believe a third-party  
8 major motion picture company would pay for Scott  
9 O'Grady for his right of publicity for a major motion  
10 picture?

11 A. Yes.

12 Q. And do you have any major motion picture  
13 companies that you are aware of that have agreed to  
14 that fee?

15 A. I'm sorry. With respect to Scott O'Grady?

16 Q. Yes.

17 A. I didn't fully understand the question because  
18 I don't -- do I know of any that have agreed to that  
19 figure?

20 Q. Yes.

21 A. No, I don't.

22 Q. Do you know if there have been any discussions  
23 with any major motion picture companies who are  
24 considering paying a million dollars for Mr. O'Grady's  
25 story for a major motion picture film?

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1 of the facts of the story that were changed, is that  
2 your basis for increasing that amount from the \$1  
3 million to the \$2.5?

4 A. Yes.

5 Q. Okay. Specifically what facts in the movie  
6 "Behind Enemy Lines" are you basing that increase on?

7 A. What specific facts?

8 Q. Yes.

9 A. I mean, there were -- there were various things  
10 changed. I mean, the basis of the story was that there  
11 were a lot of -- the basis of the story was similar,  
12 but there were a lot of facts that were changed.

13 Q. Okay. And what facts do you believe were  
14 changed that would entitle Mr. O'Grady to command a  
15 premium of two to three times the amount required of  
16 his life story?

17 A. Well, I think the -- I'm sorry I cut you off.  
18 I didn't hear the last four or five words.

19 Q. I was just reading out of your report, but  
20 anyway, what facts were changed that you believe would  
21 entitle Scott O'Grady to command a premium of two to  
22 three times the amount for his life story?

23 A. I think the primary facts would be the nature  
24 of how he was portrayed as, I guess, kind of a hot-dog,  
25 disobeying orders, some of the foul --

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1 A. Do you mean after Fox came out with theirs?

2 Q. Well --

3 A. I don't think --

4 Q. Okay. After Fox came out with theirs; we'll  
5 start there.

6 A. Well, I think that's a given that no one would.

7 Q. Okay.

8 A. No one --

9 Q. Do you know of anyone who was willing to pay a  
10 million dollars before the Fox movie came out?

11 A. Well, the motion picture industry is a small  
12 industry where people know what other people are  
13 producing, so, I mean, I think you have to -- you have  
14 to take your question and really say before anybody  
15 else knew that Fox was coming out with one, because no  
16 one is going to come out with the identical movie.  
17 There is only going to be one movie made of that  
18 situation.

19 MS. HAMILTON: Objection; nonresponsive.

20 Q. (BY MS. HAMILTON) Do you know of any film  
21 company, motion picture company, that has ever  
22 considered paying \$1 million for Scott O'Grady for a  
23 major motion picture film?

24 A. I don't know of any that have or have not.

25 Q. Now, with respect to the \$2.5 million because

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1 Q. What orders did he disobey?

2 A. I think as far as where he was supposed to fly.

3 Q. And what -- what facts do you have that he  
4 was -- and you're talking about Owen Wilson, the Chris  
5 Burnett character?

6 A. Uh-huh.

7 Q. What facts do you have that he was a hot-dog  
8 pilot?

9 A. I think it goes back to the orders. I think  
10 those are one in the same.

11 Q. Does that come from the characterization in  
12 Mr. O'Grady's complaint?

13 A. I think it also comes from that.

14 Q. Any other facts?

15 A. Did I say -- did I say the foul language?

16 Q. No, but you can add that.

17 A. Okay. Thank you.

18 Q. Okay. Is there a dollar amount that you get --  
19 that he gets as a premium for the foul language?

20 A. I don't know if there is a specific dollar  
21 amount. I think in this case, you add the -- we can do  
22 the arithmetic on the foul language and the disobeying  
23 orders and so forth, and I guess that amounts to \$1.5  
24 million.

25 Q. You're familiar with the motion picture

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1 factors that you considered in arriving at the fee?  
 2 A. No.  
 3 Q. Okay. So it was those four factors that you  
 4 used to arrive at the \$1 million fee that you state in  
 5 your conclusion and nothing else?  
 6 MR. HARDIN: Objection as to form.  
 7 A. Well, are you -- are you saying my experience  
 8 and knowledge is not -- is or isn't a factor?  
 9 Q. (BY MS. HAMILTON) I'm just asking you. If it  
 10 was a factor, then we'll include that as a factor.  
 11 A. Well, then I guess we might as well say that's  
 12 a factor.  
 13 Q. So your experience and knowledge?  
 14 A. And the -- in this particular case, the  
 15 commercial history of the books, speaking engagements  
 16 and the prior movie deals would be factors, and I think  
 17 that would probably be it.  
 18 Q. That's the sum total?  
 19 A. I would think that would be it, yes.  
 20 Q. Okay. And then can you name for me an  
 21 individual who you would consider to have had similar  
 22 experiences to Scott O'Grady and who would command the  
 23 same price?  
 24 A. That's -- that's a difficult question that  
 25 you're asking. I mean, who -- I mean, I would consider

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1 specifically considered as part of the basis of your  
 2 arriving at the million-dollar figure for Scott  
 3 O'Grady.  
 4 A. I don't know that when I valued Scott O'Grady  
 5 that I had any particular celebrity in mind and said,  
 6 "This is the same type of use."  
 7 Q. Okay.  
 8 A. And that's typically not the way it's done.  
 9 There is -- you have a knowledge of the industry and  
 10 you know what you charge for a -- it's almost like a  
 11 commodity. You charge a fee for the use of these  
 12 intellectual property rights.  
 13 MS. HAMILTON: Object as nonresponsive to  
 14 everything after, "That's typically not the way it's  
 15 done."  
 16 Q. (BY MS. HAMILTON) Do you intend to offer an  
 17 opinion about whether or not the movie -- the Fox movie  
 18 "Behind Enemy Lines" had a negative impact on Scott  
 19 O'Grady's business?  
 20 A. No.  
 21 Q. You have a website, do you not?  
 22 A. Yes.  
 23 Q. And are there two websites? I'm sorry. I  
 24 haven't gone in to find out.  
 25 Is there a specific website for CMG

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1 Jessica Lynch very comparable to Scott O'Grady.  
 2 Q. Okay. So you're saying her experience in Iraq  
 3 is the same as or similar to Captain O'Grady's?  
 4 MR. HARDIN: Objection as to form.  
 5 A. I would -- I would say has analogies to Scott  
 6 O'Grady.  
 7 Q. (BY MS. HAMILTON) I understand there are  
 8 analogies; they're in the military, but anything more  
 9 than that?  
 10 A. Well, I don't think I said -- you're putting --  
 11 Q. Was her experience used by you in arriving at  
 12 the million-dollar figure?  
 13 A. No.  
 14 Q. Can you name me -- give me the name of any  
 15 individual who you used specifically in an analogous  
 16 way to arrive at the million-dollar number that you  
 17 used for Scott O'Grady?  
 18 A. I can't say there is one individual I used.  
 19 I -- the totality of my experience in negotiating  
 20 movie-related deals.  
 21 Q. I understand that. I want specific -- a  
 22 specific name.  
 23 A. You want specific names of --  
 24 Q. No. I just want to know who specifically you  
 25 considered, the name of an individual whom you

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1 Worldwide and then a separate one for roesler.com?  
 2 A. Markroesler.com, yes.  
 3 Q. Okay. And what is the purpose of those  
 4 websites?  
 5 A. As a company, we have a lot of domain names --  
 6 Q. Uh-huh.  
 7 A. -- with, you know, hundreds of them, so there  
 8 is a company website. Our clients have websites. I  
 9 have a website. They're all kind of interrelate --  
 10 they're interrelated a lot. If it's a client, you can  
 11 go back to the company website. The company --  
 12 Q. So they're linked? Is that how you're talking  
 13 about the link?  
 14 A. Aspects -- aspects of it are linked, yes, yes.  
 15 Q. Okay. But do you use -- you use -- the purpose  
 16 of the website is to -- to promote your company, is it  
 17 not?  
 18 A. The purpose of what website?  
 19 Q. Well, how about the markroesler.com website is  
 20 to promote you --  
 21 A. The purpose of --  
 22 Q. -- over the Internet?  
 23 A. I wouldn't say that's accurate. My -- my  
 24 personal website markroesler.com is -- talks about me,  
 25 who I am, what -- some of the different community